



The State of New Hampshire  
*Department of Environmental Services*  
**Air Resources Council**

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STATE OF NEW HAMPSHIRE  
AIR RESOURCES COUNCIL

**Decision & Order**

**Docket No. 04-04 ARC**

Appeal of Working on Waste  
In Re: Title V Permit No. TV-OP-050

*Notice of Appeal*

**Background**

On January 28, 2004, The NH Department of Environmental Services, Air Resources Division ("DES"), issued an approval of a Title V Operating Permit to Wheelabrator Claremont Company, L.P. located in Claremont, NH.

Pursuant to NH RSA 125-C:12, a person aggrieved by the decision of the commissioner granting or denying a permit application may within 10 days of the decision file an appeal with the Air Resources Council ("the Council").

Working on Waste ("WOW") is a self-described "Citizens' initiative working to promote sustainable resource management in Sullivan County."

On February 9, 2004, Ms. Katie Lajoie filed a Notice of Appeal with the Council on behalf of WOW ("Appellant"). In its appeal, the Appellants failed to provide any information relative to any member of WOW. The only address listed in the Notice of Appeal is a Post Office Box in Claremont, NH. The subject of the appeal is the Title V Operating Permit to Wheelabrator Claremont Company, L.P. located in Claremont, NH.

NH Code of Administrative Rules ENV-AC 206.03(b) specifies that a Notice of Appeal shall include, among other things, the legal name of each person seeking the relief and the residence address and principle place of business of such person.

### **Discussion / Conclusion**

While several items required by NH Code of Administrative Rules ENV-AC 206.03(b) are deficient in the Appellants Notice of Appeal, in this decision, the Council directs its attention solely to the matter of the Appellants standing. In order for WOW to be granted standing before the Council, WOW must demonstrate that one or more of its members would have standing to bring an appeal before the Council independent of their representation by WOW. As noted above, the Appellants Notice of Appeal fails to identify *any* member of WOW, and as a result fails to prove standing before the Council. It is the burden of the Appellant to establish standing by its pleadings before the Council. The Council established in its June 18, 2001 Decision & Order relative to the appeal of Environmental Action of Northern New Hampshire (See Docket No. 2000-23 ARC), and upheld by the NH Supreme Court on appeal (See Case No. 2002-0035), “For a party to bring an appeal before the Council, the petitioning party must demonstrate a proper standing in order to bring about the proceeding. That is to say the burden is upon the petitioning party to show direct affectation to the petitioner as a result of a decision of DES. The subsequent burden is then to show that the decision being appealed is in some way unlawful or unreasonable. A party is not presumed to have standing in issues which only a generalized harm to the public is the primary basis to allege standing.” (See Appeal of Richards, 134 N.H. 148 (1991)).

### **Order**

Based on the reasons above, the NH Air Resources Council finds the Appellant lacks sufficient standing in this matter. The Council declines to rule on any other deficiencies or issues raised by the Notice of Appeal. The appeal is DISMISSED.

**Reconsideration**

Pursuant to Env-AC 2083.01 any party aggrieved by this decision may, within 30 days from the date of this decision, petition the NH Air Resources Council for reconsideration or rehearing.

So Ordered for the Council by:

  
Michael Sclafani, Appeals Clerk

March 25, 2004